

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

JANUARY

OCTOBER TERM, 190

No. 1377.

256

No. 3. SPECIAL CALENDAR.

THE WILLARD HOTEL COMPANY, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA,

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

~~JANUARY~~
OCTOBER TERM, 1903.

No. 1377.

No. 9, SPECIAL CALENDAR.

THE WILLARD HOTEL COMPANY, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption	<i>a</i>	1
Information	1	1
Bill of exceptions.....	2	2
Testimony of A. R. Lamb	2	2
George E. Hamilton.....	2	2
Docket entries.....	7	5
Clerk's certificate	8	5
Writ of error.....	9	6

In the Court of Appeals of the District of Columbia.

THE WILLARD HOTEL COMPANY, Plaintiff in Error, }
vs. } No. 1377.
THE DISTRICT OF COLUMBIA.

a No. 239,580.

In the Police Court of the District of Columbia, November Term,
1903.

DISTRICT OF COLUMBIA } Information for
vs. } Unlicensed Ve-
THE WILLARD HOTEL COMPANY, INCORPORATED. } hicle.

Be it remembered, that in the police court of the District of Columbia, at the city of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 (Information.)

Filed Jul- 16, 1903. J. Y. Potts, Clerk Pol. Ct., D. C.

In the Police Court of the District of Columbia, July Term, A. D.
1903.

DISTRICT OF COLUMBIA, ss:

A. Leftwich Sinclair, Esq., assistant corporation counsel, who for the said District of Columbia, prosecutes in this behalf in his proper person, comes here into court and causes the court to be informed and complains that the Willard Hotel Company, a corporation, late of the District aforesaid, on the third day of July in the year A. D. one thousand nine hundred and three, being then and there the proprietor of a certain one-horse vehicle for the conveyance of passengers for hire, did then and there hire and offer to hire the same, for the conveyance of passengers without first having obtained a license so to do and paying the license tax therefor, before engaging in said business. Contrary to and in violation of an act of Congress approved July 1, 1902, and constituting a law of the District of Columbia.

A. LEFTWICH SINCLAIR,
Assistant Corporation Counsel

Personally appeared A. R. Lamb this 16th day of July, A. D. 1903, and made oath before me that the facts set forth in the foregoing information are true.

[SEAL.]

W. H. RUFF,
*Deputy Clerk of the Police Court
of the District of Columbia.*

2 Filed Oct. 29, 1903. J. Y. Potts, Clerk of Police Court, D. C.

In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA	}	No. 239,580.
vs.		
THE WILLARD HOTEL COMPANY.		

Bill of Exceptions.

At the trial of this cause it was stipulated and agreed by and between counsel for the District of Columbia and the defendant, that the following facts testified to by A. R. Lamb and George E. Hamilton should constitute all of the evidence in the case.

Witness LAMB, who was an inspector employed by the District of Columbia, testified as follows:

On the third day of July, 1903, I approached the defendant, William Clements, on the 14th Street side of the new Willard hotel standing near the entrance, and asked him the question: Who owns this vehicle? He said The Willard Hotel Company under lease. I asked him if he was engaged in driving any persons, and he said No. I asked him: Are you waiting for a job? He said: Yes, from hotel guests only. I asked him if he made a practice of standing there daily waiting for jobs, and he said: Yes, for hotel guests. I asked him if he knew it was not a public hack stand, and he said that he did.

Whereupon, GEORGE E. HAMILTON, on behalf of said defendant, testified as follows: These two cases are in reality brought by the District of Columbia against the Willard Hotel Company to test the right of the hotel company to have its own carriages in front of its premises. One of the drivers of these carriages has been arrested, he being described in the warrant as the driver of a horse and carriage belonging to the hotel. These carriages, ten in number,

3 with six cabs, are rented annually under an annual lease to the hotel company, and are under its absolute dominion and direction. The company collects all charges for the use of said vehicles by its guests, and Mr. Berry, the livery-stable man from whom they are leased, receives the share of the receipts agreed upon in his contract. Instead of buying these vehicles outright and stabling them, we lease them, and during the term of the lease,

which is renewed the first of every June, those vehicles are absolutely under the control and direction of the hotel, and are severed absolutely from the direction or control of Mr. Berry. The vehicles are segregated from the others, and you will find that the drivers sent there are not one driver today and another tomorrow, or one team today and another tomorrow; but certain teams and drivers are sent who are used in the hotel business regularly. The same drivers and the same teams are to be found there. Mr. Berry hires the drivers and pays them, and he buys the horses, harness, and vehicles and he liveries the drivers under the contract with the company, according to the direction and selection of the company. The horses and property are housed at his stables and he feeds the horses and keeps everything in repair. Under the agreement he gets out of the receipts from these vehicles a certain percentage; these receipts do not pass through his hands, or the hands of a driver in a single instance; but they are charged, collected and regulated entirely by the hotel. Mr. Berry has nothing whatever to do with them and the hotel has everything to do with them. He gets his rental, amounting to a sum, which under the agreement, in his estimation and ours, would pay him for the expenses he is put

4 to in keeping these carriages for us, and we have the balance as profit. The effect of this agreement is to segregate from Mr. Berry's general business the number of vehicles, drivers and teams called for in the contract, for the exclusive use of the hotel. These teams are not used by him in his general business, with our permission or consent, and the hotel has the right at any moment of the day to call for the full complement named in the lease, and Mr. Berry would suffer if he did not have them.

The COURT: There is one other question I want to ask: In the morning are those ten carriages and six other vehicles you speak of sent to the hotel, or are they sent there when you telephone for them?

The WITNESS: This agreement was made after some experience, and not made simply on the thought of either side. After the hotel was opened we could gauge very well about the needs of the hotel as to carriages. We know that from about the first of November until the adjournment of Congress that there is a need for all of the carriages our lease calls for? These carriages are not needed all of the time, but we have the right to them at any and all times. It works in about this way: They are called frequently to meet immediate demands and sometimes in anticipation of coming demands, in the latter case they would wait in front of the hotel until needed. These carriages stand ready to come all the time at our call during the day. We do not have our whole line of vehicles there. We moderate as far as possible the onus upon the street, with reference to the needs of the hotel, and we keep there during the day in the busy season, more carriages, and in the flat season fewer carriages,—

5 just enough to meet the absolute requirements of the hotel business. I desire also to say that the orders of the hotel are positive,—and the drivers would not be allowed to con-

tinue in the service of the hotel if we knew of a breach of those orders,—that they must take no one unless he comes through the direction of the hotel; that they must not take any one from the street, or any one at all unless they know that they are taken as guests of the hotel. We endeavor to enforce this rule absolutely. The driver is not there offering his vehicle for hire, but he is there as the driver of the vehicle belonging to the hotel under lease, and he was already hired. He was there to be directed as to what use he should make of the vehicle, and what job he should take. The charge for the vehicle is not collected by the driver, but it is charged up to the hotel guest just as his breakfast, dinner and his room is charged up to him. It is a part of the guest's hotel expenses.

This was all the evidence offered.

Thereupon counsel for the defendant requested the court to rule as matter of law that the act of Congress of July 1, 1902, entitled "An act making appropriations to provide for the expenses of the government of the District of Columbia, for the fiscal year ending June 30, 1903, and for other purposes," was inapplicable to the business carried on by said defendant in the use of its said vehicles, and that upon the facts submitted the information in this case be quashed.

But the court refused to rule as requested by the defendant, and held that the use of said vehicles by the defendant, as shown by the evidence, constituted a violation of the act of Congress referred to; to which refusal counsel for the defendant then and there duly excepted.

And thereupon counsel for the defendant moved the court, upon all the evidence and the pleadings, to discharge the defendant; but the court refused so to rule, to which refusal counsel for the defendant then and there duly excepted, and the said exceptions, and each of them, were duly noted upon the minutes of the court, before the court passed judgment in the case, and notice was then and there given in open court of the intention of the defendant to apply for a writ of error to the Court of Appeals of the District of Columbia.

In witness whereof, at the request of the defendant's counsel, the presiding justice signs this bill of exceptions, this 30th day of October, A. D. 1903.

(Signed)

I. G. KIMBALL,
Judge Police Court.

7

(Copy of Docket Entries.)

No. 239,580.

In the Police Court of the District of Columbia, July Term, 1903.

DISTRICT OF COLUMBIA vs. THE WILLARD HOTEL COMPANY, IN- corporated.	}	Information for Unlicensed Vehicle.
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Defendant arraigned October 26 1903. Plea: Not guilty.

Judgment: Guilty. Sentence: To pay a fine of five dollars.

Exceptions taken to rulings of court on matters of law and notice given by defendant in open court of *his* intention to apply to a justice of the Court of Appeals of the District of Columbia for a writ of error.

Recognizance in the sum of one hundred dollars entered into on writ of error to the Court of Appeals of the District of Columbia upon the condition that in the event of the denial of the application for a writ of error, the defendant will, within five days next after the expiration of ten days, appear in the police court and abide by and perform its judgment, and that in the event of the granting of such writ of error, the defendant will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises. Edward J. Stellwagen, surety. Bill of exceptions filed.

October 30, 1903.—Bill of exceptions settled and signed. Writ of error received from the Court of Appeals.

8 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA, { ss:
 District of Columbia, }

I, N. C. Harper, deputy clerk of the police court of the District of Columbia, acting in the absence of the clerk, do hereby certify *that* the foregoing pages, numbered from 1 to 7 inclusive, to be true copies of originals in cause No. 239,580 wherein The District of Columbia is plaintiff and The Willard Hotel Company, Incorporated, defendant, as the same remain upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, — the city of Washington, in said District, this 13th day — November, A. D. 1903.

[Seal Police Court of District of Columbia.]

N. C. HARPER,
 Deputy Clerk Police Court, Dist. of Columbia.

9 UNITED STATES OF AMERICA, ss :

The President of the United States to the Honorable I. G. Kimball,
judge of the police court of the District of Columbia, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said police court before you, between The District of Columbia, plaintiff, and The Willard Hotel Company, defendant, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals at Washington within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Richard H. Alvey,
Seal Court of Appeals, Chief Justice of the said Court of Appeals,
District of Columbia. the 30th day of October, in the year of our
Lord one thousand nine hundred and three.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by—

SETH SHEPARD,
*Associate Justice of the Court of Appeals
of the District of Columbia.*

Endorsed on cover: District of Columbia supreme court. No. 1377. The Willard Hotel Company, plaintiff in error, vs. The District of Columbia. Court of Appeals, District of Columbia. Filed Nov. 13, 1903. Robert Willett, clerk.

